

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
August 16, 2006 Session

SUZANNE WISDOM, ET AL. v. TERANCE ALAN CARDER, ET AL.

Appeal from the Circuit Court for Lawrence County
No. CC-1385-03 Robert L. Holloway, Judge

No. M2005-02207-COA-R3-CV - Filed on February 26, 2007

A trucking company appeals the amount of personal injury damages awarded after a bench trial wherein the trucking company stipulated as to liability. Because we conclude that the evidence does not preponderate against the trial court's findings as to damages, we affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court
Affirmed

PATRICIA J. COTTRELL, J., delivered the opinion of the court, in which WILLIAM C. KOCH, JR., P.J., M.S., and FRANK G. CLEMENT, JR., J., joined.

John Thomas Feeney, Catheryne L. Grant, Nashville, Tennessee, for the appellants, Terance Alan Carder, Wonda Carroll and Wonda Carroll Trucking.

Paul B. Plant, J. Christopher Williams, Lawrenceburg, Tennessee, for the appellees, Suzanne Wisdom, and Husband, Kerry Wisdom.

OPINION

Suzanne Wisdom, a pharmacist, suffered injuries when her car was rear-ended by a dump truck driven by Terance Carder, an employee of Wonda Carroll and/or Wonda Carroll Trucking (collectively Carroll Trucking). Ms. Wisdom and her husband, Kerry Wisdom, brought suit.¹ The parties stipulated that at the time of the accident, Mr. Carder was acting in the scope of his employment, that he negligently drove the truck, and that his negligence was the proximate cause of the accident. They also stipulated that his negligence would be imputed to Carroll Trucking.

¹ Although the Wisdoms sued the driver as well as his employer, Mr. Carder was never served. The case proceeded against Ms. Carroll and the company.

Consequently, the issue remaining to be tried was the amount of damages to which the Wisdoms were entitled.²

The case was tried by the trial court, the parties having agreed to withdraw their demands for a jury trial. The trial court awarded Suzanne Wisdom \$134,269.97 in compensatory damages for her injuries, including lost past and future earnings and past and future pain, and awarded her husband, Kerry Wisdom, \$30,000 for loss of consortium.

Carroll Trucking appeals the trial court's damage award and argues that the evidence preponderates against the amounts awarded. The company asserts that the judgment should be limited to a maximum of \$25,000 and that the award in this case was "abnormally high for a low impact, soft tissue whiplash injury."

The trial court made extensive findings of fact in its final order entered August 24, 2005. Among those findings, the court specifically found both Ms. Wisdom and Mr. Wisdom to be credible witnesses. Ms. Wisdom incurred medical bills of \$5,769.67, expenses of \$1,000 for over the counter medications and massages, and missed one week of work after the accident, losing wages of \$2,500. The trade-in value of the Wisdoms' automobile involved in the accident, although repaired, diminished by \$6,000.

The trial court found that Ms. Wisdom had suffered a soft tissue injury of her cervical lumbar region as a result of the accident. With regard to the medical testimony, the trial court recounted the testimony of Ms. Wisdom's treating neurosurgeon, Dr. McCombs, and the company's expert, Dr. O'Brien, who performed an independent examination and evaluation. Dr. McCombs diagnosed Ms. Wisdom as having muscular ligamentous injury to her cervical lumbar region. While he did not feel Ms. Wisdom was a candidate for future surgery, he stated it would not be uncommon for her to have ongoing pain and cervical lumbar discomfort in the future. Dr. McCombs testified that Ms. Wisdom had a ten percent permanent partial impairment according to the AMA guidelines. Dr. O'Brien opined that Ms. Wisdom had a zero percent impairment and that she had sustained only a minor soft tissue injury that had healed by the time of the trial. Nonetheless, Dr. O'Brien also did not dispute that Ms. Wisdom still experiences pain with some frequency. He stated that ongoing pain and muscle spasms were consistent with his opinion.

Both Ms. Wisdom and her husband testified about the pain she continued to experience and its effect on their lives. The trial court found the Wisdoms credible and made the following specific findings:

The Plaintiff is three (3) years post-accident and continues to have pain in her neck which is at times debilitating.

²The Wisdoms had requested punitive as well as compensatory damages. The trial court dismissed the punitive damages claim, and the Wisdoms have not appealed that ruling.

The injury to Plaintiff has affected her ability to earn, has caused problems in her marriage, and in her relationship to her family.

With regard to the damages suffered by the Wisdoms, the trial court made the following findings:

The Plaintiff is a pharmacist. At the time of the accident she was the managing pharmacist at the Super Wal-Mart in Lawrenceburg, Tennessee. She supervised 12 to 13 employees and had numerous other responsibilities, including responsibility over controlled substances.

At the time of the accident she was earning \$43.00 to \$44.00 per hour, plus bonuses in the approximately amount of \$11,000.00 to \$12,000.00 per year.

At the time of the accident she was working ninety (90) hours every two (2) weeks earning an average of One Thousand Nine Hundred Thirty-Five Dollars (\$1,935.00) to One Thousand Nine Hundred Eighty Dollars (\$1,980.00) per week;

Since the accident the Plaintiff has been forced to reduce her work hours to forty (40) hours per week or eighty (80) hours every two (2) weeks;

Plaintiff has lost earnings related to having to cut back from 90 to 80 hours every two weeks.³

Mr. Wisdom has experienced and will continue to experience a loss of consortium.

The amount of damages to be awarded is a question of fact. *Beaty v. McGraw*, 15 S.W.3d 819, 827 (Tenn. Ct. App. 1998), *citing Sholodge Franchise Sys., Inc. v. McKibbin Bros., Inc.*, 919 S.W.2d 36, 42 (Tenn. Ct. App. 1995). The amount of damages appropriate in a particular case depends on the particular situation, and, thus, determinations concerning the amount of damages are factually driven. *Beaty*, 15 S.W.3d at 327. Consequently, as Carroll Trucking recognizes, the standard of review of the amount of damages awarded by a trial court sitting without a jury is the standard generally applicable to appellate review of findings of fact. Under that standard, we review the record *de novo* and afford the trial court's findings of fact a presumption of correctness unless the evidence preponderates otherwise. Tenn. R. App. P. 13(d); *Murfreesboro Medical Clinic, P.A. v. Udom*, 166 S.W.3d 674, 678 (Tenn. 2005).

³ As part of her lost future earnings claim, Ms. Wisdom presented evidence of a promotion she had anticipated but did not receive because, in her opinion, she received two negative evaluations after the accident that were related "directly or indirectly to the pain she has on a regular basis." The trial court declined to award any damages for the failure to obtain the promotion, stating "[l]oss of future income related to her promotion to District Supervisor or loss of income related to stock options is speculative and will not be considered."

In personal injury cases in particular, the amount of damages to be awarded rests largely within the discretion of the trier of fact. *Overstreet v. Shoney's, Inc.*, 4 S.W.3d 694, 703 (Tenn. Ct. App. 1999); *Coakley v. Daniels*, 840 S.W.2d 367, 372 (Tenn. Ct. App. 1992), citing *Shell Oil Co. v. Blanks*, 330 S.W.2d 569, 573 (1959). The amount allowable as compensation for personal injuries is not measured or set by any fixed rules of law or any mathematical formulas. *Overstreet*, 4 S.W.3d at 703; *Coakley*, 840 S.W.2d at 367; *Blalock v. Temple*, 276 S.W.2d 493, 497 (Tenn. Ct. App. 1954). Because the amount of damages is left to the sound discretion of the trier of fact, *Overstreet*, 4 S.W.3d at 703, some alternative statements of the standard of review have been made. See, e.g., *Blalock v. Temple*, 276 S.W.2d at 497 (stating that the amount found by the factfinder is entitled to great weight on appeal); *Finks v. Gillum*, 273 S.W.2d 722, 730 (Tenn. Ct. App. 1954) (stating that the factfinder's award of damages will not be disturbed on appeal unless amounts fixed are so excessive as to indicate passion, prejudice and caprice). In any event, appellate relief as to damages may not be granted in contravention of the province of the trier of fact. Tenn. R. App. P. 36(a); *BVT Lebanon Shopping Center, Ltd. v. Wal-Mart Stores, Inc.*, 48 S.W.3d 132, 137 (Tenn. 2001).

We have fully reviewed the record in this case. While there is some conflicting evidence as to the medical diagnosis, there was no contradicting evidence as to other issues regarding how the injuries, and the resulting pain, had affected both Ms. Wisdom and Mr. Wisdom. We cannot say that the evidence preponderates against the trial court's findings as to the amount of damages incurred by the Wisdoms due to the injuries Ms. Wisdom suffered as a result of the accident caused by Carroll Trucking's employee's negligence.

Accordingly, the trial court's judgment is affirmed. Costs on appeal are taxed to the appellants, Wonda Carroll and Wonda Carroll Trucking.

PATRICIA J. COTTRELL, JUDGE